

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0059P

Withholding Tax

For the months July & August 2003

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; West Publishing Co. v. Ind. Dept of Revenue (1988), Ind. Tax. 524 N.E.2d 1329, 1333.

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of monthly withholding tax returns for the months July & August 2003.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the error was the result of misinformation from a Department employee.

The taxpayer's computer system was affected by a computer virus. The taxpayer was unable to operate the parallel system as the parallel system (which was at the taxpayer's POA office) was also affected by said computer virus. Because of this situation, the taxpayer was unable to obtain the information necessary to complete the withholding tax returns.

The Department states the taxpayer could have made an estimated payment. Both the taxpayer and the Department agree an estimated tax payment could have been made.

However, according to the taxpayer's POA, the POA was not aware an estimated payment was allowed by the Department. The POA called the Department prior to the due date to find out what could be done about the situation. The POA talked to an unidentified clerk in Taxpayer Services. The POA asked the clerk what could be done but received no answer.

With regard to the misinformation from the Department employee, the taxpayer provides no clear evidence that the Department employee made a misrepresentation. "The state will not be estopped in the absence of clear evidence that its agents made representations upon which the party asserting estoppel relied." West Publishing Co. v. Ind. Dept of State Revenue (1988), Ind. Tax 524 N.E.2d 1329, 1333. Thus, as the taxpayer is unable to provide clear evidence of a misrepresentation from a Department employee, the taxpayer fails to establish reasonable cause for filing late.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. As inattention is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.